IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

ORDER.

(1) S.B.Sales Tax Revision Petition No.1245/99
C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(2) S.B.Sales Tax Revision Petition No.1251/99
C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(3) S.B.Sales Tax Revision Petition No.187/04
A.C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(4) S.B.Sales Tax Revision Petition No.188/04
A.C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(5) S.B.Sales Tax Revision Petition No.189/04
A.C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(6) S.B.Sales Tax Revision Petition No.192/04
A.C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(7) S.B.Sales Tax Revision Petition No.344/04
A.C.T.O., Udaipur vs. M/s Allied Electronic & Magnetics Ltd.

(8) S.B.Sales Tax Revision Petition No.408/04
A.C.T.O., Udaipur vs. M/s United Data Products

(9) S.B.Sasx Tax Revision Petition No.306/05
A.C.T.O., Udaipur vs. M/s United Data Products

(10) S.B.Sales Tax Revision Petition No.465/05
A.C.T.O., Udaipur vs. M/s United Data Products

(11) S.B.Sales Tax Revision Petition No.355/06
C.T.O., Udaipur vs. M/s United Data Products.

Date of Order: July 25, 2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. Sangeet Lodha for the petitioner.
Mr. Rajendra Mehta for the respondent.

REPORTABLE

BY THE COURT:

This bunch of revision petitions involve question of levy of tax on sale of floppy diskettes. The dispute is two folds, one under the Rajasthan Sales Tax Act and another under the Central Sales Tax Act. Two revision petitions; S.B.Civil Revision Petition No.1245/99 and 1251/999 are arising under the RST Act. The rest of the revisions petitions are in relation to the levy of sales tax on sale of the floppy diskettes under the CST Act.

The detail of dates of various orders as well as of the years for which orders were passed by the authorities as well as of actual liability are not relevant for the purpose of deciding these revision petitions because on those points there is no controversy. The assessing authority passed the assessment order in two matters under RST Act imposing tax, interest and penalty under various heads and the main imposition of tax was on the sale of floppy diskettes. In the opinion of the assessing authority, the floppy diskettes independently records the information/ datas within itself and, therefore, the floppy diskettes cannot be part

or accessory of the computer and hence it is taxable @ 10% under the general entry instead of 4% under Entry No.17, which is for the levy of tax on sale of computer accessories. The assessing authority's orders were challenged by the assessee by preferring appeal before the Deputy Commissioner(appeals), Commercial Tax, Udaipur. The appeals for the two different assessment orders were dismissed by the appellate authority the Deputy Commissioner(Appeals). The assessee preferred further appeals before the Rajasthan Tax Board, Ajmer. These appeals were allowed by the Tax Board by order dated 23.2.1999(in both the cases). The Tax Board held that the floppy diskette is computer accessory and, therefore, tax (RST)leviable on sale of floppy diskettes is 4% as per Entry No.17 of the Notification dated 4.3.1992.

Being aggrieved against the order of the Tax Board, the revenue has preferred these two revision petitions to challenge the two orders of the Tax Board referred above. The dispute in these revisions is only that whether floppy diskette is computer accessory or not? According to the revenue, the floppy diskette is an independent Commodity and is not essential part of the computer. It independently records information/datas within itself. The learned counsel for the petitioner tried to support his plea with the help of the decision of the Bombay High Court delivered in the case of Wipro Products Ltd. vs. Union of India and others (1986(25) E.L.T. 485)(Bom.), wherein the Bombay High

Court held that the diskettes are like the cassettes which are used in a video cassette recorder for obtaining the image on the screen. The Bombay High Court, therefore, held that by no stretch of imagination, it can be suggested that video cassettes are part or accessories of the video cassette player/recorder. Applying same analogy, the Bombay High Court held that floppy diskette is not accessory for a computer. In the revision petition also substantially the contention of the revenue is founded upon the judgment of the Bombay High Court referred above and the same example has been given by the revenue of video/music cassette recorder, which according the the revenue are not the accessories of the equipment, i.e., tape or video recorder or player.

Despite taking a stand that floppy is not a computer accessory nor it is part of computer, in another set of revision petition, which are arising under the CST Act, the stand of the revenue is that the floppy diskettes cannot be treated to be electronic goods and on the contrary, it is an essential and material part of computer. According to the learned counsel for the revenue this stand was taken by the revenue because of the reason that the Tax Board already in its various decisions under RST Act held that the floppy diskette is computer accessory. According to the revenue a Notification No.908 was issued on 5.2.1994 under Section 8(5) of the CST Act, 1956 providing levy of the tax on "computer including parts and accessories thereof" @ 4%. Therefore,

according to revenue the tax leviable under the CST Act, 1956 on sale of the Floppy Diskettes is chargeable as provided by the Notification dated 5.2.1994 @ 4%. Since assessees found more beneficial Notification coming into force w.e.f. 27.3.1995, took the stand that the floppy diskette is computer accessory but is also electronic item. For electronic items for which new Notification has been issued by the Government on 27.3.1995, therefore, the floppy diskettes stand taken away from the purview of Notification dated 5.2.1994 or if floppy diskette is covered under both the Notifications, the assessee is entitled to take benefit of more beneficial provision and that is Notification dated 27.3.1995.

It is relevant to mention here that if the floppy diskette is not accepted as computer accessory consequently not covered by the Notification dated 5.2.1994, the floppy diskettes are to be taxed in general or residuary entry and the difference is 4% : 10%. If the floppy diskette is accepted as computer accessory it is covered by Notification dated 5.2.1994 and is beneficial to assessee. In the year 1995 on 27.3.1995, another Notification was issued providing levy of tax @ 2% for electronic items. The assessees succeeded in convincing the Tax Board that though the floppy diskette is computer accessory and tax liability before Notification dated 27.3.1995 was 4% on its sale but since floppy diskette is electronic item, therefore, it can be taxed as per Notification dated 27.3.1995 @ 2% instead of @ 4% as per Notification

dated 5.2.1994.

It is also submitted by the learned counsel for the revenue that even as per assessee itself the Floppy Diskettes is computer accessory which is clear from the stand taken by the assessee in the connected revision petitions arising under the RST Act. The assessee took the benefit under RST Act only because of reason that assessee's own contention was accepted and it was held by the Tax Board that Floppy Diskette is computer accessory. Learned counsel for the petitioner vehemently submitted that if in the orders of the Tax Board holding the Floppy Diskette a computer accessory, then the orders of the Tax Board in the matter of levy of central sales tax on sale of p\floppy diskettes can only under Notification dated 5.2.1994 which provides levy of CST @ 4% on sale of computer accessory and order of the Tax Board holding that floppy diskettes are “electronic item”, and its sale is governed by Notification dated 27.3.1995 is liable to be set aside.

According to the learned counsel for the petitioner, firstly the Floppy Diskettes are not the essential part of the computer nor are accessories because of the reason that the computer can run without Floppy Diskettes and it is not necessary that every computer should have floppy drive to run computer. The Floppy Diskette records and keep the data within it like as picture or audio is captured and stored in tapes. The audio video tapes can also be played only by their player.

The tapes are not the accessories of recorder or player. The Bombay High Court, therefore, rightly observed that in cases of audio and video cassettes, audio and video cassette recorder and player are independent commodity and cassettes are independent commodity. Second limb of argument raised for levy of tax @ 4% treating the Floppy Diskettes as computer accessory is dependent upon the decision on first question. It is submitted that once the Floppy Diskettes are held to be computer accessories then irrespective of floppy diskette's operational and functional properties of electronics, the item shall remain in the same category for the purpose of levy of tax, under the Notification where there is specific reference and inclusion of said commodity. It is clear from the Notification dated 5.2.1994 that the “computer accessories” are taxable as per the Notification dated 5.2.1994 and the assessee cannot take benefit of Notification dated 27.3.1995 which provides for tax on sale of “electronic items”. Words “electronic items” is of general nature where as “computer accessory” is specific item included in the Notification dated 5.2.1994. It is submitted that specific entry will exclude the general entry and therefore, the tax on sale of Floppy Diskettes under CST Act is leviable as per Notification dated 5.2.1994. The learned counsel for the petitioner(revenue) relied upon the judgment delivered in the case of State of Gujarat v. Pfizer Ltd. (1991 Vol.82 STC 374).

The learned counsel for the assessees vehemently submitted that the Floppy Diskettes are magnetic discs and specific item known by name. Floppy Diskettes can be used only through the computer. The Floppy Diskettes cannot work independently. According to the learned counsel for the respondents any item which adds or increases the utility of the another item, then that item is accessory of main functional item. The learned counsel for the respondents relied upon several judgments and reference of some of which has been given in the impugned orders of the Tax Board. In the judgment relied upon by the learned counsel for the respondents, television stand, refrigerator stand, cycle seat cover, cycle lock, type-writer ribbon were accepted as accessories of their main article with which they are used. Therefore, according to the learned counsel for the respondents, the Tax Board rightly held that the Floppy Diskette is computer accessory. It is also submitted that the judgment relied upon by the petitioner in the case of Wipro Product Ltd.(supra) has no application to the present controversy because of the reason that the subject matter and dispute in the case of Wipro Product Ltd. was entirely different and the question whether the Floppy Diskettes are accessories of the computer as such was not involved in the controversy. In addition to above, the learned counsel for the respondents also submitted that in view of the fact that the Floppy Diskettes can be used only through computer and it enhances the

utility of the computer, therefore, it is computer accessory only in the light of reasoning given in the various decisions of Hon'ble Apex Court and also in view of judgments of other High Courts, therefore, the view in the case of the Wipro Product Ltd. appeared to be wrong. Advancing his argument, the learned counsel for the respondent submitted that though the floppy diskette is computer accessory but it is an electronic item. Earlier the floppy diskettes were covered under the Notification No.908 dated 5.2.1994 and was taxable @ 4% as computer accessories. The State Government issued another Notification on 27.3.1995 providing sales tax on sale of electronic items @ 2%. Therefore, the floppy diskette which is computer accessory because of its functionality, is being electronic item, also falls in the good described under the heading “electronic item”. The “magnetic diskettes” are included specifically in the list referred in the Notification dated 27.3.1995. Therefore, the floppy diskette was falling in the term computer accessory and tax leviable on its sale was 4% as per Notification dated 5.2.1994. But this item floppy diskette stands taken out for the purpose of levy of tax out of several computer accessories covered by Notification dated 5.2.1994 by inclusion of floppy diskette under Notification dated 27.3.1995. The words “computer accessory” is a wide term which includes any item which is accessory for computer and may be of iron, wood, plastic, glass, rubber or PVC and also may be

electronic item. Out of this general term “computer accessory”, the electronic item is specific and floppy diskette is undisputedly electronic item. That specific item from the general category “computer accessory” has been picked up by Notification dated 27.3.1995. After 27.3.1995, all electronic items, may they be accessories of computer or of any other article or may be independent article, they are taxable only under the Notification dated 27.3.1995 which provides tax @ 2%. The learned counsel for the respondent further submits that thereafter in the year 2000, specifically on 3.3.2000, the State Government issued another Notification and by that Notification, the tax on floppy diskettes has been made 2%. Therefore, it is clear that the floppy diskette was rightly held to be having tax liability @ 2% by the Rajasthan Tax Board in the impugned orders.

I considered the arguments advanced by the learned counsels, perused the facts and reasons given by the Tax Board in their orders. I also considered the judgments relied upon by the learned counsel for the parties.

Whether one article is accessory or not, came up for consideration before Hon'ble the Apex Court in relation to several items. The earliest judgment cited is the decision given in the case of State of Uttar Pradesh and another v. Kores (India) Ltd. (1977(39)STC 8), wherein the question involved was whether type-writer ribbon is an

accessory and not a part of type-writer ? Another question was whether the carbon paper is not a “paper” as understood in common parlance but a specialized article used for copying purpose and, therefore, falls in the category of unclassified goods ? While considering the above issues, Hon'ble the Apex Court held that ribbon is not a part of the type-writer though it may not be possible to type out any matter without it and also held that the word “paper” in the common parlance and in the commercial sense means paper which is used for printing, writing or packing purposes and, therefore, carbon paper is not a paper as envisaged by the Entry No.2 of the relevant Notification. Meaning thereby, an accessory may be a specific item without which the main item may not even function, still it may be termed as an accessory of that main article. Hon'ble the Apex Court approved the decision of the Mysore High Court delivered in the case of State of Mysore vs. Kores (India) Ltd. (1970)26 STC 87), wherein it has been held that what is meant by type-writer in the commercial sense, is relevant and the Mysore High Court held that type-writers are being sold in the market without type-writer ribbon and, therefore, type writer ribbon is not an essential part of a type-writer. Hon'ble the Apex Court in the above said judgment also observed that aviation petrol is not a part of the aeroplane nor diesel is a part of a bus and in the same way ribbon is not a part of type-writer though it may not be possible to type out any

matter without it.

The question whether car seat cover and upholstery are accessories to motor vehicles and are taxable as accessories, came up for consideration before the Hon'ble Apex Court in the case of Mehra Brothers vs. Joint Commercial Tax Officer, Madras (1991) 80 STC 233). Hon'ble the Apex Court held as under:-

> "Whether the articles in question contribute to convenience or effectiveness in the use of the car as a whole is not the correct test to determine whether the articles are "accessories" of motor vehicles. The correct test is whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the motor article or add to the beauty, elegance or comfort for the use of the motor vehicle, or a supplementary or secondary to something of main or primary importance. Whether an article or part is an "accessory" cannot be decided with reference only to its necessity to the effective use of the motor vehicle as a whole. General adaptability may be relevant but is not by itself conclusive."

Hon'ble the Apex Court in the judgment of Mehra Brothers(supra) considered the definition of the "accessories" given in the Webster's Comprehensive Dictionary International, Vol.I, as well as the various earlier judgments and in view of the said binding decisions, it is clear that accessories means an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something

else or is supplementary or secondary to something of greater or primary importance which assists in operating or controlling the tone resources of an organ. Hon'ble the Apex Court accepted the view of the Hon'ble Supreme Court as given in the case of Annapurna Carbon Industries Co. v. State of Andhra Pradesh (1976) 37 STC 378(SC)). The decision given in the case of Annapurna Carban Industries Co. (supra) which was followed in Mehra Brother's case, was again followed by the Hon'ble Supreme Court in the case of Union Carbide India Ltd. vs. State of Andhra Pradesh (1995(98) STC 1). Hon'ble the Apex Court in the case of Union Carbide India Ltd. further held that the accessories are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument. In the case of Union Carbide India Ltd., arc carbons were held to be accessories to the cinematographic equipment and were held not as accessories to electrical goods.

The Karnataka High Court in the case of Kumar Agencies and another vs. Commissioner of Commercial Taxes and another (1989(72) STC 140), held that the cycle locks are not included in “all kinds of padlocks and locks”. The Karnataka High Court held that cycle locks are accessories of bicycle.

The Delhi High Court in the case of Televista Electronics(P) Ltd. vs. Commissioner of Sales Tax (1992) 87 STC 410), after considering

several earlier judgments, held that decorative penal of television set is an accessory. And the Kerla High Court in the case of Marykutty Joseph v. State of Kerla (1996(102) STC 79) held that television stands and refrigerator stands and tops are accessories of televisions and refrigerators and they are not falling in the category furniture.

The Karnataka High Court in the case of Pioneer Enterprises vs. Joint Commissioner of Commercial Taxes (Appeals) and another (2004 (134) 138) held that TV antenna is an accessory and not an component despite the fact that there may not be reception of signals without the antenna.

In the light of above decisions, it is to be examined what is the nature of floppy diskette. Some times, some articles by their obvious properties are so obviously considered in particular category and then the counter question comes instantly, whey it should not be so as it is being understood in common parlance ? The floppy diskettes are magnetic diskettes and are used through computers only. The revenue could not dispute that the computer in itself is a known article and can function without floppy diskette. The computers are sold with or without floppy drive. Floppy diskettes are also sold in the market as such and not as necessary part of computers. The floppy diskette increases the function of the computer and it adds effectiveness and supplement to the function of the computer. Therefore, the floppy

diskette which is not the essential part of the computer, therefore, is not part of the computer but is an accessory of the computer as it fulfills requirements required for one specific item for its becoming accessory of other as laid down in the judgments referred above. The test to determine one as accessory in the light of the decisions referred above, if applied to the floppy diskette, it can fall only in the category of accessories of computer. How it is not accessory to the computer, there appears to be no reason with the revenue. The test is not that whether main item can function without the said accessory or not, because a cycle can run without its lock, a car can run without upholstery as well as the seat covers. The refrigerator and television can function without their stands, still they are accessories. The car cannot run without petrol nor aeroplane can fly without petrol but the petrol is not part of the car or the aeroplane. In the same way, without video cassette and without type-writer, video player and type-writer cannot function but still the type-writer ribbon and the video cassette are not the part of the type-writer and video player and recorder and they are accessories of the type-writer and the video player/recorder. The floppy diskette, therefore, was rightly held to be the accessories of the computer because it is adjunct, an accompaniment, an addition for convenient use of computer and is supplementary to computer.

Therefore, the revision petitions preferred by the revenue, being

S.B.Civil Revisions Petition Nos.1245/99 and 1251/99 deserves to be dismissed. It is held that the floppy diskette is computer accessory and was liable to tax as per computer accessories as per the Notification dated 5.2.1994.

Now the next question arises whether the floppy diskette which has been held to be computer accessory, is taxable as electronic item under the Notification dated 27.3.1995, despite the fact that the floppy diskette is computer accessory. It will be relevant to quote the Notification dated 5.2.1994 and 27.3.1995, which are as under:-

> "(1) F.4(40)FDGr.IV/93-39 dated 5.2.1994
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> S.O. 159.- In exercise of the powers conferred by S.8 (5), CST Act, 1956, the State Govt. Hereby directs that the tax payable under sub-sections (1) and (2) of the said section, by any dealer having his place of business in the State in respect of the sale made by him from any such place of business in the course of inter-State trade or commerce, of computers including parts and accessories thereof shall be calculated at the rate of 4% without furnishing "C" form.
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> (2) F.4(11)FDGr.IV/95-84 dated 27.3.1995
>
> S.O.434- In exercise of the powers conferred by S.8 (5), CST Act, 1956, the State Govt. Hereby directs that the tax payable under sub-section (1) and (2) of the said section, by any dealer having his place of business in the State in respect of the sales made by him of electronics and telecommunication goods and equipments, from any

such place of business in the course of inter-State trade or commerce, shall be calculated at the rate of 2% without furnishing of declaration in Form "C" or certificate in form "D".

This shall have immediate effect."

The Notification dated 5.2.1994 was in force wherein computer, its parts and computer accessories were covered. The computer accessories, may be a number of the items wherein floppy diskette is also one of them. It is not in dispute that floppy diskette is an electronic item. The computer accessory, therefore, became wide term as it may includes any other item and may also include the electronic items and non-electronic items. Not only specific provision for taxing electronic item has been made by the Notification dated 27.3.1995 but it refers to a list Annex.-D which is the list of electrical industrial unit and the Notification made it clear that items referred in the said list Annx.-D shall be taxed @ 2%. In the list Annx.-D, there is a specific Entry No.9 which has large number of articles within it. At S.No.9.7, there is a mention of "Add on memory system, at S.No. 9.8-Magnetic Disk/Diskette, at S.No.9.13-Other Date Storage/Memory System and at S.No.9.21 Other Computer Peripherals. Further at S.No.9.29-Date Processing System Parts/Spares. The floppy diskette is a magnetic diskette and also it stores datas and functions to Add on Memory System like computer. Therefore, by the subsequent Notification dated

27.3.1995, a more specific provision for taxing the floppy diskette has been made. As compared to specification given in the Notification dated 27.3.1995 with respect to the description given in the Notification dated 5.2.1994, the floppy diskette is subsequently included under the Notification dated 27.3.1995. Hence, even when the floppy diskette is a computer accessory, still it can be taxed, only as per the Notification dated 27.3.1995 @ 2% and not @ 4%, as it could have been taxed under the Notification dated 5.2.1994 before coming into force of the Notification dated 27.3.1995.

In addition to above, I find force in the submission of the learned counsel for the respondents that when one item is covered under two Notifications then the Notification which is more beneficial to the assessee, should be applied. For this, learned counsel for the respondent relied upon following judgments:

(1)Diwan Brothers v. Central Bank of India, Bombay and others (AIR 1976 SC 1503),

(2)Shakti Lace Factory v. Commissioner of Sales Tax (1984 Vol.57 STR 261)

(3) Collector of Central Excise, Baroda vs. Indian Petro Chemicals ((1997) 11 SCC 318)

The learned counsel for the respondent also relied upon the judgments in support of his contention that if there are two views possible, the interpretation favourable to the assessee should be adopted. For this, the learned counsel for the respondents relied upon

following judgments:

(1)Sun Export Corporation, Bombay v. Collector of Customs, Bombay and another ((1997) 6 SCC 564)
(2)Mysore Minerals Ltd., B.G. Road, Bangalore v. Commissioners of Income Tax, Karnataka, Bangalore ((1999) 7 SCC 106)
(3) Deys Medical Stres Limited v. Commissioner, Trade Tax, U.P. (2004 Vol.134 STC 1)

Firstly, the floppy diskettes are specifically covered under the Notification dated 27.3.1995 and the floppy diskette has been taken away from the purview of the Notification dated 5.2.1994 with the issuance of Notification dated 27.3.1995 and secondly, the floppy diskette, falls in both the categories;(1) computer accessory and (2) a magnetic diskette and Add on memory system and other data storage system as per the Entry Nos.9.8, 9.7 and 9.13 respectively, then also the tax can be levelled as per the Notification dated 27.3.1995.

In view of the above discussion, both the bunch of revisions petitions challenging the orders of the Tax Board are dismissed. No order as to costs.

(**PRAKASH TATIA),J.**

mlt.